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Attorneys for Claimant
 CONRAD BANEZ

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE COMPLAINT OF TUTOR- SALIBA/KOCH/TIDEWATER, JV, Plaintiff, For Exoneration from or Limitation of Liability.) No. C05 4043 WHA)) E-Filing case)) STIPULATION PRESERVING) TUTOR-SALIBA/KOCH/) TIDEWATER'S LIMITATION) RIGHTS, LIFTING THE STAY) AGAINST STATE COURT) LITIGATION, AND ABATING) THE WITHIN LIMITATION) ACTION; ORDER THEREON
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WHEREAS, Plaintiff TUTOR-SALIBA/KOCH/TIDEWATER, a joint
 venture, has prayed for limitation and/or exoneration under the Vessel Owners'
 Limitation of Liability Act ("the Act"), 46 U.S.C. §§ 181 *et seq.*, in connection with

1 the marine injury involving their vessel, the barge *EM 1146* that occurred on or
2 about July 30, 2004;

3
4 AND WHEREAS Claimant CONRAD BANEZ is the sole limitation claimant
5 herein and wishes to prosecute his claim against Plaintiff TUTOR-SALIBA/
6 KOCH/TIDEWATER before a jury in the related action filed in the San Francisco
7 Superior Court, entitled *Banez vs. Tutor-Saliba/Koch/Tidewater*, case No. CGC-05-
8 439790;
9

10
11 IT IS HEREBY STIPULATED AND AGREED, by the undersigned
12 Plaintiff and Claimant, acting by and through their respective attorneys, that:

13
14 (1) TUTOR-SALIBA/KOCH/TIDEWATER has the right to litigate the
15 issue of whether it is entitled to limitation and/or exoneration from liability under
16 the Act, and the issue of the proper value of the limitation fund in this Court, and
17 this Court has exclusive jurisdiction to determine said issues, including, *inter alia*,
18 the issue of the value of the limitation fund;
19

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21 (2) Claimant will not seek a determination of the issues set forth in
22 paragraph (1) above in any proceeding other than this case, and consents to waive
23 any *res judicata* effect the decisions, rulings or judgments of any other forum might
24 have on those issues, and further consents to waive the defense of issue preclusion
25 with respect to all matters reserved for determination by this Court;
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1 (3) Claimant will not seek to enforce any judgment rendered in any
2 judicial forum, whether against Plaintiff or another person or entity entitled to seek
3 indemnity or contribution from Plaintiff by way of cross-claim or otherwise that
4 would expose TUTOR-SALIBA/KOCH/TIDEWATER to liability in excess of the
5 limitation fund until such time as this Court has adjudicated Plaintiff's right to limit
6 that liability;
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9 (4) In the event this Court determines that TUTOR-SALIBA/KOCH/
10 TIDEWATER is entitled to limit its liability, Claimant will not seek to enforce any
11 judgment which would require Plaintiff to pay damages in excess of the limitation
12 fund; and,
13

14
15 (5) In the event this Court determines that TUTOR-SALIBA/KOCH/
16 TIDEWATER is entitled to limit its liability, any claim based upon fees and/or
17 costs awarded against Plaintiff and in favor of Claimant will have first priority
18 against the limitation fund.
19

20
21 THE ABOVE IS SO STIPULATED:
22

23 Dated: 12/8/05

McGuinn, Hillsman & Palefsky
Attorneys for Claimant
CONRAD BANEZ

24
25
26 By: 

JOHN R. HILLSMAN

1
2 Dated: 12/9/05

Cox, Wootton, Griffin, Hansen
& Poulos
Attorneys for Plaintiff TUTOR-
SALIBA/KOCH/TIDEWATER

6
7 By: [Signature]
8 RICHARD C. WOOTTON


9
10 **ORDER**

11 THE PARTIES HAVING AGREED THERETO, AND GOOD CAUSE
12 APPEARING THEREFOR, it is hereby ordered that the Monition issued by this
13 Court on October 14, 2005 be modified so that:

- 14
15 1) The injunction against State court litigation be and hereby is lifted;
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17 2) The within action be and hereby is abated until such time as the action
18 pending in San Francisco Superior Court under the title *Banez vs.*
19 *Tutor-Saliba/Koch/Tidewater*, case No. CGC-05-439790 is either tried
20
21 to final judgment, or otherwise resolved.

22 Counsel for plaintiff in this action shall submit a status report on Banez v.
23 Tutor-Saliba/Koch/Tidwater, case No. CGC-05-439790, every three months from today's date.

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25 Dated: December 13, 2005

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WILLIAM ALSUP,
UNITED STATES DISTRICT JUDGE